

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ADJUSTACAM LLC,

PLAINTIFF

v.

AMAZON.COM, INC. *et al.*,

DEFENDANTS.

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Civil Action No. 6:10-cv-00329-LED

JURY TRIAL DEMANDED

**DEFENDANT DELL INC.'S ANSWER AND COUNTERCLAIMS TO ADJUSTACAM
LLC'S THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Dell Inc. ("Dell"), by and through its undersigned counsel, hereby presents its Answer and Counterclaims to Plaintiff AdjustaCam LLC's ("AdjustaCam") Third Amended Complaint (the "Complaint").

ANSWER

1. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint.

2. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint.

3. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Complaint.

4. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Complaint.

5. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Complaint.

6. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint.

7. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint.

8. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint.

9. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint.

10. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint.

11. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint.

12. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint.

13. Dell admits that its corporate name is "Dell Inc." Dell admits the remainder of the allegations of Paragraph 13 of the Complaint.

14. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint.

15. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint.

16. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint.

17. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint.

18. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint.

19. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint.

20. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint.

21. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint.

22. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint.

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26. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint.

27. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint.

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30. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint.

31. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint.

32. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the Complaint.

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36. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint.

37. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 of the Complaint.

38. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint.

39. Dell admits that the Complaint purports to allege patent infringement, which arises under the patent laws of the United States, Title 35 of the United States Code. Dell admits that this Court has subject matter jurisdiction over such actions pursuant to 28 U.S.C. §§ 1331 and 1338(a). Dell admits that it is subject to the personal jurisdiction of this Court for this action. Dell denies the remainder of the allegations in Paragraph 39 of the Complaint as to Dell. Dell is without knowledge of information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint as to the other Defendants.

40. Dell admits that venue in this district is technically proper as to Dell pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). Dell does not admit that this forum is the most convenient forum for this action. Dell denies the remainder of the allegations in Paragraph 40 of the Complaint as to Dell. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 of the Complaint as to the other Defendants.

41. Dell admits that the face of U.S. Patent No. 5,855,343 (“the ‘343 Patent”) indicates that it was filed on March 7, 1997 and issued on January 5, 1999 under the title “Camera Clip.” Dell denies the remaining allegations in Paragraph 41 of the Complaint.

42. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 of the Complaint.

43. Dell admits that the ‘343 Patent relates generally to a clip for supporting a portable camera. Dell denies the remaining allegations in Paragraph 43 of the Complaint.

44. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 of the Complaint.

45. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 of the Complaint.

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70. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70 of the Complaint.

71. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 of the Complaint.

72. Dell denies the allegations in Paragraph 72 of the Complaint.

73. Dell denies the allegations in Paragraph 73 of the Complaint.

74. Dell denies the allegations in Paragraph 74 of the Complaint.

75. Dell denies the allegations in Paragraph 75 of the Complaint.

76. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76 of the Complaint.

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131. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 131 of the Complaint.

132. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 132 of the Complaint.

133. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 133 of the Complaint.

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142. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 142 of the Complaint.

143. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 143 of the Complaint.

144. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 144 of the Complaint.

145. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 145 of the Complaint.

146. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 146 of the Complaint.

147. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 147 of the Complaint.

148. Dell denies the allegations in Paragraph 148 of the Complaint as to Dell. Dell is without knowledge or information sufficient to form a belief as to the truth of the reminder of the allegations in Paragraph 148 of the Complaint.

149. Dell is unable to respond to any specific allegation, to the extent one exists, in Paragraph 149 of the Complaint because AdjustaCam has failed to include any statement of the factual basis of any such willfulness allegation against Dell. Dell denies that it has committed any acts of willful infringement. Dell is without knowledge or information sufficient to form a belief as to the truth of the reminder of the allegations in Paragraph 149 of the Complaint.

150. Dell denies that AdjustaCam is entitled to any type of relief.

151. All remaining allegations not specifically admitted herein are denied.

DEFENSES AND AFFIRMATIVE DEFENSES

First Defense

152. On information and belief, Dell does not infringe and has not infringed, directly or indirectly, any valid claim of the '343 Patent.

Second Defense

153. On information and belief, the '343 Patent is invalid under one or more of the provisions in Title 35 of the United States Code, including §§ 102, 103, and 112.

Third Defense

154. On information and belief, all or some of AdjustaCam's claims for relief against Dell for infringement of the '343 Patent are barred by the doctrine of laches.

Fourth Defense

155. On information and belief, prosecution history estoppel and/or prosecution disclaimer precludes any finding of infringement.

Fifth Defense

156. On information and belief, AdjustaCam lacks standing to bring the present cause of action to the extent it does not have a sufficient interest, or any interest, in the '343 Patent.

Sixth Defense

157. On information and belief, AdjustaCam is not entitled to injunctive relief because, *inter alia*, any injury to AdjustaCam is not immediate or irreparable, and AdjustaCam has an adequate remedy at law.

Seventh Defense

158. On information and belief, some or all of AdjustaCam's damages, if any, are limited under 35 U.S.C. § 287.

COUNTERCLAIMS

1. Counter-Plaintiff Dell Inc. is a Delaware corporation, with its principal place of business in Round Rock, Texas.

2. On information and belief, Counter-Defendant AdjustaCam LLC is a Texas Limited Liability Company, with its principal place of business in Frisco, Texas.

3. These are counterclaims for a declaratory judgment of noninfringement and invalidity that arise under the Declaratory Judgment Act, specifically, 28 U.S.C. §§ 2201 and 2202, and the Patent Act, 35 U.S.C. § 100, et seq. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 2201(a).

4. Counter-Defendant has chosen this venue to enforce its patents. Venue is proper in this Court and judicial district for counterclaims pursuant to 28 U.S.C. §§ 1391 and 1400(b).

FIRST COUNTERCLAIM

NONINFRINGEMENT OF THE ASSERTED PATENT

5. Dell realleges and incorporates herein by reference Paragraphs 1-4 of its Counterclaims, above.

6. AdjustaCam has made allegations that Dell infringes the '343 Patent through the manufacture, use, sale, offer for sale, or importation of certain products of Dell.

7. AdjustaCam's actions and allegations have created a case or controversy between Counter-Plaintiff and Counter-Defendant.

8. Products made, used, sold, offered for sale, or imported by Dell lack at least one requirement of the inventions claimed in the '343 Patent.

9. Dell is entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201 that its accused products do not infringe the '343 Patent.

SECOND COUNTERCLAIM

INVALIDITY OF THE ASSERTED PATENT

10. Dell realleges and incorporates herein by reference Paragraphs 1-9 of its Counterclaims, above.

11. Claims of the '343 Patent are invalid, *inter alia*, for at least one of the following reasons: they are anticipated under 35 U.S.C. § 102; they are obvious under 35 U.S.C. § 103; the specification does not comply with 35 U.S.C. § 112, first paragraph; and the claims do not comply with 35 U.S.C. § 112, second paragraph.

12. Dell is entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201 that claims of the '343 Patent are invalid.

13. Dell demands a jury trial as to all elements so triable.

PRAYER FOR RELIEF

Wherefore, Dell respectfully prays that:

- a. The Complaint be dismissed with prejudice;
- b. The Court deny all relief sought by AdjustaCam;
- c. This Court adjudge, declare, and decree that all of the claims of the '343 Patent are invalid, and that all of the claims of the '343 Patent have not been infringed by Dell;
- d. This Court issue a judgment declaring this case to be exceptional in favor of Dell under 35 U.S.C. § 285, and award to Dell its reasonable attorneys' fees and other expenses incurred in connection with this action;
- e. This Court issue judgment awarding Dell its costs of suit incurred in this action; and
- f. This Court grant Dell such other further relief to which it may be entitled.

August 29, 2011

Respectfully submitted,

/s/ Roger Fulghum

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ATTORNEYS FOR DEFENDANT DELL INC.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served via e-mail on all counsel who are deemed to have consented to electronic service on August 29, 2011. Local Rule CV-5(a)(3)(A).

/s/ Roger Fulghum

Roger Fulghum